

# **Guidelines on the Effect of Sales or Use Taxes in the Valuation of Aircraft**

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# **GUIDELINES ON THE EFFECT OF SALES OR USE TAXES IN THE VALUATION OF AIRCRAFT**

Aircraft present special assessment problems because of their transitory nature. Whether an aircraft is acquired from a seller inside or outside of California for use in this state affects not only the situs of the aircraft for property tax purposes, but also the application of sales or use tax in arriving at the value of the aircraft. These guidelines are to provide county assessors assistance in the consideration of sales or use taxes as a component of value in the valuation of aircraft for property tax purposes.

## **OVERVIEW OF THE SALES TAX AND USE TAX PROVISIONS**

### **SALES TAX**

Purchases of tangible personal property are subject to sales or use taxes unless the law provides an exception through an exemption or exclusion. The sales tax rate varies statewide.<sup>1</sup> The sales tax is imposed on the retailer for the privilege of selling tangible personal property. Sales of aircraft by licensed dealers are usually subject to sales tax, for which reimbursement is collected at the time of purchase from the buyer. Purchases of aircraft from private parties made inside or outside of California for use in the state are subject to the use tax. The use tax rate is the same as the sales tax rate of the locality or district where the aircraft is habitually located.

### **USE TAX**

Use tax applies to aircraft that are purchased for use in this state from licensed dealers outside of California and non-dealers or private parties inside or outside of California. In cases where the purchaser has already paid a sales or use tax to another state, a credit is allowed against the use tax owed in California.<sup>2</sup> Use tax is added to most leases of tangible personal property. Private party sales or brokered transactions are normally subject to use tax if the first use of the property occurs in California. Use tax may be added even if the purchaser is not a resident of the state. The sales and use taxes are *mutually exclusive*, which means that either sales tax or use tax applies to a single transaction, but not both. Neither the federal government nor other states collect use tax on behalf of California. It is up to the purchaser to report and submit to the State Board of Equalization (Board) the use tax amount due. The use tax is due either within one year of the purchase date or by the end of the month following the date the buyer is contacted by the Board. Late payments are subject to interest and penalties.<sup>3</sup>

Pursuant to section 6248, a rebuttable presumption is made that if an aircraft is purchased outside of California on or after January 1, 2010, and is brought into California within 12 months from

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<sup>1</sup> Currently, the statewide base rate is 8.25 percent, with higher rates in locations where voters have approved additional district taxes.

<sup>2</sup> The tax credit cannot exceed the total sales tax of the applicable California state, county, local and district taxes.

<sup>3</sup> Revenue and Taxation Code section 6591.

the date of its purchase, was acquired for storage, use, or other consumption in California, it is subject to use tax if any of the following occurs:<sup>4</sup>

1. The aircraft was purchased by a California resident. A closely held corporation or limited liability corporation shall be considered a California resident if 50 percent or more of the share or membership interests are held by shareholders or members who are residents of California.<sup>5</sup>
2. The aircraft was subject to property tax in California during the first 12 months of ownership.<sup>6</sup>
3. If purchased by a nonresident of California, the aircraft is used or stored in California more than one-half of the time during the first 12 months of ownership.

The rebuttable presumption may be controverted by documentary evidence that the aircraft was purchased for use outside of California during the first 12 months of ownership. The evidence may include, but is not limited to, evidence of proper registration of the aircraft outside of California.<sup>7</sup> For aircraft purchases prior to October 1, 2008, the following table shows the appropriate test period to use when determining the application of use tax to out-of-state purchases of aircraft.

<b>PURCHASE DATE</b>	<b>TEST PERIOD</b>
Prior to October 2, 2004	90-Day Test
October 2, 2004 – June 30, 2007	12-Month Test
July 1, 2007 – September 30, 2008	90-Day Test
On or after October 1, 2008	12-Month Test

## **EXEMPTIONS FROM USE TAX**

There are situations where an exemption from use tax is allowed:

- Certain types of aircraft ownership
- Aircraft parts
- Use of aircraft
- Foreign governments

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<sup>4</sup> Prior to October 2, 2004, and then between July 1, 2007 and September 30, 2008, a 90-day test applied to determine if use tax was applicable. See Regulation 1620, subdivision (b)(4); and Frequently Asked Questions posted on the Board's website at [www.boe.ca.gov/sutax/faq90day.htm](http://www.boe.ca.gov/sutax/faq90day.htm).

<sup>5</sup> Revenue and Taxation Code section 6248, subdivision (a)(1).

<sup>6</sup> Revenue and Taxation Code section 6248, subdivision (a)(3).

<sup>7</sup> Revenue and Taxation Code section 6248, subdivision (b).

- Nonresidents
- Repair, retrofit, or modification of aircraft

### **TYPES OF AIRCRAFT OWNERSHIP**

The collection of a tax is prevented if it is prohibited by the United States Constitution or if there is a statutory exemption. Use tax does not apply to the sale, storage, use, or other consumption of aircraft sold, leased, or sold to persons for the purpose of leasing to:

- A common carrier of persons or property whose aircraft operation is sanctioned by a governmental authority
- A foreign government for aircraft use outside of California
- A nonresident who will not use the aircraft in this state (other than to remove the aircraft from California)<sup>8</sup>

### **AIRCRAFT PARTS**

When tangible personal property becomes a component part of an aircraft because of authorized maintenance, repair, overhaul, or improvement of that aircraft, the charges for such personal property, labor, and services rendered are exempt from tax provided the aircraft will continue to be used by a common carrier of persons or property, a foreign government for use outside of the state, or a nonresident using the aircraft outside of California.<sup>9</sup>

### **USE OF AIRCRAFT**

In determining whether a purchaser or lessee of an aircraft is using an aircraft as a common carrier of persons or property, only the use of the aircraft by the carrier during the 12-month test period commencing with the first operational use of the aircraft will be considered.<sup>10</sup>

If the aircraft is used by a carrier for more than one-half of its operational use during the test period, then the carrier's principal use of the aircraft will be deemed to be that of a common carrier. Also, as discussed below, the aircraft's gross receipts from use must be above certain thresholds established by regulation. Each flight of the aircraft is examined separately for purposes of determining common carrier use. For these purposes, a flight is the powered navigation of aircraft from one location on the ground or water to the first point on the ground or water at which the aircraft lands.<sup>11</sup>

A flight qualifies as a common carrier use of the aircraft for purposes of the exemption only if the flight is authorized or permitted by the governmental authority under which the aircraft is operated and involves the transportation of persons or property. Examples of flights that *do not* qualify as common carrier flights for the purposes of the use tax exemption are:

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<sup>8</sup> Sales and Use Tax Regulation 1593, subdivision (b)(1).

<sup>9</sup> Sales and Use Tax Regulation 1593, subdivision (b)(2).

<sup>10</sup> Sales and Use Tax Regulation 1593, subdivision (c)(1).

<sup>11</sup> Sales and Use Tax Regulation 1593, subdivision (c)(1)(B).

- Student training flights
- Flights to re-position aircraft
- Crop dusting flights
- Flights for parachute jumps or air drops
- Search and rescue flights<sup>12</sup>

Examples of flights that **do** qualify as common carrier use when such services are offered indiscriminately to the public or to some portion of the public (and are authorized by governmental authority) are:

- Flights to transport persons or property
- Sightseeing flights
- Flights to transport injured persons to medical facilities<sup>13</sup>

## **FOREIGN GOVERNMENT**

A foreign government will be deemed to have acquired an aircraft for use outside of California if the aircraft is promptly removed from the state, and the foreign government, as owner or lessee, does not return the aircraft to the state within 12 months after its removal from the state.

## **NONRESIDENT**

A nonresident will be considered as not using the aircraft in California, other than to remove the aircraft from the state, if the aircraft is promptly removed and is not returned to California within 12 months after its removal from the state.<sup>14</sup>

## **COMMON CARRIER'S MINIMUM GROSS RECEIPTS**

The use tax exemption for a common carrier's aircraft is subject to minimum gross receipts.<sup>15</sup> For purposes of the income requirement, *gross receipts* do not include compensation paid by the owner or lessor of the aircraft, or by related parties<sup>16</sup> for use of the aircraft as a common carrier.<sup>17</sup> For aircraft sold, leased, or sold for the purpose of leasing from January 1, 1987 to December 31, 1996, it is presumed that a person is not using the aircraft as a common carrier if the person's yearly gross receipts from the use of the aircraft as a common carrier do not exceed 10 percent of the purchase cost of the aircraft or \$25,000, whichever is less. For aircraft sold on

<sup>12</sup> Sales and Use Tax Regulation 1593, subdivision (c)(1)(C)1.

<sup>13</sup> Sales and Use Tax Regulation 1593, subdivision (c)(1)(C)2.

<sup>14</sup> Prior to September 30, 2008, the aircraft was subject to a 90-day provision. Sales and Use Tax Regulation 1593, subdivision (c)(3).

<sup>15</sup> Sales and Use Tax Regulations 1593, subdivision (c) (1) (D).

<sup>16</sup> *Related parties* are the owner's or lessor's immediate family, entities in which the owner, lessor, or immediate family have more than one-half interest, and employees of the owner or lessor who use the aircraft on company business.

<sup>17</sup> Sales and Use Tax Regulation 1593, subdivision (c)(1)(F).

1 or after January 1, 1997, it is presumed that a person is not using the aircraft as a common carrier  
2 if the person's yearly gross receipts from the use of the aircraft as a common carrier do not  
3 exceed 20 percent of the purchase cost of the aircraft or \$50,000, whichever is less. These  
4 presumptions may be rebutted by contrary evidence satisfactory to the Board showing that the  
5 person is using the aircraft principally as a common carrier for hire.

6 *Contrary evidence* includes sworn oral or written testimony to prove that a person is in the  
7 business of a common carrier. Such testimony may include evidence that a person was unable to  
8 meet the minimum yearly gross receipts requirements because the aircraft was unfit to fly.<sup>18</sup>

## 9 **REPAIR, RETROFIT, OR MODIFICATION OF AIRCRAFT**

10 An aircraft, subject to the 12-month provisions of Revenue and Taxation Code section 6248, that  
11 is brought into California for the purpose of repair, retrofit, or modification shall not be deemed  
12 to be acquired for storage, use, or other consumption in California.<sup>19</sup>

13 However, these provisions do not apply if during the period following the time the aircraft is  
14 brought into California and ending when the repair, retrofit, or modification of the aircraft is  
15 complete, more than 25 hours of airtime are logged on the aircraft by the registered owner of that  
16 aircraft or by an authorized agent operating the aircraft on behalf of the owner. The calculation  
17 of airtime logged on the aircraft does not include airtime following the completion of the repair,  
18 retrofit, or modification of the aircraft that is logged for the sole purpose of returning or  
19 delivering the aircraft to a point outside of California.<sup>20</sup>

## 20 **AIRCRAFT AND AIRCRAFT PARTS EXEMPTION CERTIFICATE**

21 For purposes of the proper administration of and to prevent the evasion of the sales and use tax,  
22 it is presumed that all sales of aircraft are subject to sales or use tax until the contrary is  
23 established. This presumption may be rebutted by the seller for any sale of an aircraft or aircraft  
24 parts by establishing to the satisfaction of the Board that the gross receipts or sales price from the  
25 sale are not subject to the tax, or by obtaining an aircraft or aircraft parts exemption certificate.<sup>21</sup>  
26 The aircraft or aircraft parts exemption certificate shall relieve the seller from liability for the  
27 sales tax or use tax collection only if it is taken timely and in good faith. (See Exhibit 1 for a  
28 sample of the exemption certificate.)

## 29 **SALES OR USE TAXES IN THE VALUATION OF AIRCRAFT**

### 30 **VALUATION OF GENERAL AIRCRAFT**

31 Commonly used approaches in the valuation of general aviation aircraft for property tax  
32 purposes are the cost, comparative sales, and income approaches. The county assessor should

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<sup>18</sup> Sales and Use Tax Regulation 1593, subdivision (c)(1)(G).

<sup>19</sup> Sales and Use Tax Regulation 1620, subdivision (b)(5)(D).

<sup>20</sup> Sales and Use Tax Rule 1620, subdivision (b)(5)(D).

<sup>21</sup> Sales and Use Tax Regulations 1593, subdivision (e).

1 consider all three approaches and, based on the available data, decide which approach is most  
2 appropriate. Often, one approach will be more feasible than another.<sup>22</sup>

### 3 **TAX SITUS OF GENERAL AIRCRAFT**

4 For property tax purposes, general aircraft are assessable at the location where the aircraft is  
5 habitually situated. When an aircraft is in various locations throughout California, it is assessable  
6 in the place where it spends the greatest amount of ground time. Property Tax Rule 205 provides  
7 in part:

8 (b) GENERAL AIRCRAFT. Aircraft other than those subject to Revenue and  
9 Taxation Code sections 1150 to 1155 [certificated aircraft] have situs for taxation  
10 purposes at the airport in which they are habitually situated when not in flight. An  
11 aircraft that spends a substantial amount of ground time at each of two or more  
12 airports has its tax situs at the airport where it spends the greatest amount of  
13 ground time.

14 If an aircraft establishes tax situs both in California and outside California, apportionment is  
15 necessary between California and other jurisdictions.<sup>23</sup> If an aircraft is operated only in  
16 California, then the aircraft has established tax situs in California regardless of the owner's  
17 domicile. The county in which the aircraft is habitually situated has assessment jurisdiction  
18 without apportionment.<sup>24</sup>

### 19 **ADDITION OF SALES OR USE TAX IN THE VALUATION OF GENERAL AIRCRAFT AND AIR** 20 **TAXIS**

21 General aircraft subject to property taxation would include freight charges and sales or use tax as  
22 components of value.<sup>25</sup> Even though sales or use tax may not have been collected when the  
23 aircraft was acquired, sales or use tax would be included as part of the total value of the aircraft  
24 for assessment purposes. Property Tax Rule 10 provides in part:

25 (a) In appraising tangible personal property, the assessor shall give recognition to  
26 the trade level at which the property is situated and to the principle that property  
27 normally increases in value as it progresses through production and distribution  
28 channels....

29 (b) Except as provided by the following subdivisions, tangible personal property  
30 held by a consumer shall be valued at the amount of cash or its equivalent for  
31 which the property would transfer to a consumer of like property at the same trade  
32 level if exposed for sale on the open market...Full economic cost...includes costs

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<sup>22</sup> See Assessors' Handbook Section 577, *Assessment of General Aircraft*, for a complete discussion of general aircraft assessment.

<sup>23</sup> *Ice Capades, Inc. v. County of Los Angeles* (1976) 56 Cal.App.3d 745; *GeoMetrics v. County of Santa Clara* (1982) 127 Cal.App.3d 940.

<sup>24</sup> *Ice Capades, Inc.*, *supra* at 755; Property Tax Rule 205, subdivision (b).

<sup>25</sup> *Xerox Corp. v. Orange County* (1977) 66 Cal.App.3d 746.



1 typically incurred in bringing the property to a finished state, including labor and  
2 materials, freight or shipping cost, installation costs, sales or use taxes....

3 Air taxis which are operated in scheduled air taxi operations are subject to property taxation as  
4 certificated aircraft. Nonscheduled air taxis, however, are treated as general aircraft for property  
5 taxation purposes. Revenue and Taxation Code section 1154 provides in part:

6 ... (c) All other air taxis shall be assessed in the county where the aircraft is  
7 habitually situated in the same manner and at the same ratio as other personal  
8 property in the county subject to general property taxation. Such aircraft shall be  
9 taxed at the same rate and in the same manner as all other property on the  
10 unsecured roll.

11 Thus, a county assessor should include sales or use tax in the property tax valuation of general  
12 aircraft that are used as nonscheduled (or on-demand) air taxis. Aircraft used by common carriers  
13 and the federal government are exceptions to the general rule of the inclusion of sales tax in the  
14 property tax valuation.

#### 15 **VALUATION OF AIRCRAFT USED AS COMMON CARRIER**

16 The general rule in determining market value for aircraft is that where price is the basis of value,  
17 sales/use tax, freight, and installation cost are elements of that value, and should be included in  
18 the estimate of market value.<sup>26</sup>

19 There are exceptions to the general rule. Equipment rented to federal instrumentalities and  
20 aircraft used by common carriers<sup>27</sup> (neither of which are subject to sales tax or use tax), for  
21 example, are valued without sales tax or use tax as an element of value. The reason in both cases  
22 is that the consumer (the federal government or the air carrier) is never liable for sales tax or use  
23 tax on purchases of such equipment. Consequently, the assessment of such property should not  
24 include sales tax or use tax, unless or until the property is put to private use or rented to a private  
25 party.

26 For sales or use tax to be excluded from the property tax valuation of general aircraft that are  
27 used as a common carrier, the following information must be provided to the county assessor for  
28 each lien date for which exclusion of sales or use tax as an element of property tax valuation is  
29 sought:

- 30 1. A Board approved *Aircraft or Aircraft Parts Exemption Certificate* for principal use as a  
31 common carrier.<sup>28</sup>

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<sup>26</sup> *Xerox Corp. v. Orange County* (1977) 66 Cal.App.3d 746.

<sup>27</sup> *Common carrier* as defined in Regulation 1593 does not have to be a commercial aircraft used for scheduled airline operations. An on-demand, unscheduled air taxi, if operated as a common carrier, qualifies under the definition of common carrier. See *Rick Auerbach v. Los Angeles County Assessment Appeals Board No. 2* (2008) 167 Cal.App.4<sup>th</sup> 1428.

<sup>28</sup> Sales and Use Tax Regulation 1593(e), *Aircraft and Aircraft Parts Exemption Certificate*.

2. Documented evidence that the aircraft is being operated as a common carrier on the lien date.
3. Documented evidence that the aircraft was used exclusively as a common carrier during the calendar year prior to the lien date. If the aircraft is put to private use or rented to a private party during the calendar year, it would not qualify for the exemption as a common carrier.

## **VALUATION OF CERTIFICATED AIRCRAFT**

Certificated aircraft are valued for property tax purposes under the fleet concept. Using the fleet concept, a county assessor values all aircraft of each particular fleet type. The fleet types are grouped by identical make, model, series, and regional aircraft regardless of age that is flown into California. Under this concept, the types of aircraft that have gained situs in California by their entry into revenue service are valued as a fleet; then only an allocated portion of the entire value of the fleet is ultimately taxed to reflect actual presence in California.<sup>29</sup>

## **TAX SITUS OF CERTIFICATED AIRCRAFT AND SCHEDULED AIR TAXI OPERATORS**

Property Tax Rule 202, *Allocation of Aircraft of Certificated Air Carriers and Scheduled Air Taxi Operators*, provides that the tax situs is as follows:

(a) AIR TAXIS. An aircraft whose owner on the lien date used it in scheduled air taxi service at any time during the representative period selected...or which has been purchased for scheduled air taxi service but not yet put into such service and not yet used in any other service, is assessable under sections 1150 to 1156 of the Revenue and Taxation Code....<sup>30</sup>

(b) SITUS. Aircraft of United States registry operated by certificated air carriers... or scheduled air taxis... and flown in intrastate, interstate, or foreign commerce shall be deemed to be situated only in those taxing agencies...in which the aircraft normally make physical contact. The physical contact must be intentional rather than by accident or as the result of an emergency, and it must involve embarking or disembarking of crew, passengers, or freight....

Certificated aircraft taken out of scheduled service are assessable as general aircraft if:

1. The aircraft is taken out of scheduled service and grounded in the county prior to the lien date.<sup>31</sup>
2. The aircraft is not flown during the representative period.<sup>32</sup>

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<sup>29</sup> See Assessors' Handbook Section 570, *Assessment of Commercial Aircraft*, for a complete discussion of commercial aircraft assessment.

<sup>30</sup> For valuation purposes, scheduled air taxi service is treated the same as certificated aircraft.

<sup>31</sup> Revenue and Taxation Code section 1150.

<sup>32</sup> Revenue and Taxation Code section 1153.

1        3. The aircraft has an established tax situs in California and is solely situated in or  
2        habitually situated in the county on the lien date.<sup>33</sup>

3        **ADDITION OF SALES OR USE TAX AS A COMPONENT OF VALUE**

4        As a general rule, aircraft subject to property taxation would include freight charges and sales or  
5        use tax as components of value.<sup>34</sup> If sales or use tax is applicable to similar consumers using  
6        aircraft at a similar trade level, then sales or use tax should be included in the assessed value  
7        even though sales or use tax was not paid when the aircraft was acquired.<sup>35</sup> The exceptions to the  
8        general rule are common carrier aircraft and federal government aircraft.

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<sup>33</sup> Revenue and Taxation Code section 220 and Property Tax Rule 138 provide an exception for aircraft solely in California to be repaired, overhauled, modified, or serviced.

<sup>34</sup> *Xerox Corp. v. Orange County* (1977) 66 Cal.App.3d 746.

<sup>35</sup> Property Tax Rule 10.

**SAMPLE****AIRCRAFT OR AIRCRAFT PARTS EXEMPTION CERTIFICATE**

I HEREBY CERTIFY: That the aircraft identified below will be used:

- ☐ Principally as a common carrier\* of persons or property under authority of the laws of California, of the United State, or of any foreign government; or
- ☐ Outside California by a foreign government; or
- ☐ Outside California by a nonresident of California which aircraft was not used in this state other than the removal from California.

That the purchase of all tangible personal property which I shall purchase from

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is exempt from tax under section 6366 or 6366.1 of the Revenue and Taxation Code and Regulation 1593. The identification numbers of all aircraft purchased under this certificate are listed below. Until this certificate is revoked in writing, all other property purchased from the seller consists of tangible personal property to become a component part of aircraft in the course of repair, maintenance, overhaul, or improvement of same in compliance with Federal Aviation Administration requirements, or United States military equivalent, which aircraft will be used by the purchaser or the purchaser's lessee in a manner qualifying for exemption under section 6366 or 6366.1 and under Regulation 1563. (The purchaser issuing this certificate can revoke it as to a particular purchase by clearly indicating on a purchase order that the purchase is not exempt under either section 6366 or 6366.1 or under Regulation 1593.)

I UNDERSTAND that in the event any such property is used in any manner other than as specified above, I am required by Sales and Use Tax Law to report and pay any applicable sales or use tax.

\*NOTE: Revenue and Taxation Code section 6366 creates a rebuttable presumption that an aircraft is not principally used as a common carrier if the owner's or lessor's annual gross receipts from such operations do not exceed 20 percent of the purchase price of the aircraft or fifty thousand dollars (\$50,000), whichever is less. Amounts received for use of the aircraft as a common carrier from the owner or lessor of the aircraft or related parties or employees of the owner or lessor, are excluded from gross receipts for purposes of this presumption.

Identification Numbers of Aircraft Purchased under this Certificate:

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Date Certificate Given: \_\_\_\_\_

Purchaser \_\_\_\_\_  
(Company Name)

Address \_\_\_\_\_

Signature \_\_\_\_\_  
(Signature of Authorized Person)

Title \_\_\_\_\_  
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any) \_\_\_\_\_